

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

WP(C).No. 31798 of 2006(I)

OS.370/2000 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
.....

PETITIONER:

MR.R.O.ABDUL KALAM,
OOROTHU HOUSE, THAIKKADU VILLAGE,
ALUVAYI P.O., THRISSUR DISTRICT.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.N.C.SUMESH KUMAR.

RESPONDENTS:

1. THE FEDERAL BANK LTD.,
HEAD OFFICE, ALUVA, ERNAKULAM.
2. MRS.P.S.JESIA, STAR COTTAGE,
COCHIN-682 035.
3. MR.A.M.SADIQ,
STAR COTTAGE, COCHIN-682 035.

R1 BY ADV. SRI.B.S.KRISHNAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE INTERIM APPLICATION NO.1657/2006 FILED BY RESPONDENTS 2 AND 3 HEREIN BEFORE THE DRT, KERALA.

P2: TRUE COPY OF THE ORDER DT.17.10.2006 ISSUED BY THE DRT, KERALA IN EXT.P1 APPLICATION.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.31798 of 2006
.....

Dated this the 8th day of December, 2006.

JUDGMENT

The petitioner is one of the defendants in the O.A. pending before the DRT. While petitioner is the guarantor, the borrowers are selling property with the concurrence of the Bank at below market price is the case of the petitioner. Standing Counsel for first respondent-Bank submitted that the liability is over Rs.6 crores and the sale of property proposed is only for Rs.77 lakhs. The petitioner being personal guarantor has a right to oppose sale of defaulter's property at below market price. However, there is nothing wrong in the Bank and the purchasers and debtors agreeing to sell the property at any price if petitioner is exonerated from liability. The first respondent-Bank should therefore either exonerate the petitioner from liability for agreeing for sale of defaulter's property arranged by such defaulters or otherwise, the property should be sold in public auction after due publication. In the circumstances, the DRT is directed to ensure that defaulter's property is not allowed to be sold to parties arranged by such defaulters. The property should be sold in public auction after due publicity in which petitioner is also free to participate or arrange purchasers. The W.P. is disposed of with direction to the DRT to authorise sale only as above. If any item of property

is sold which requires confirmation by DRT, the DRT will critically examine the value at which it is sold.

C.N.RAMACHANDRAN NAIR
Judge

pms